

## SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality (**DEQ**), Solid and Hazardous Waste Division (**SHWD**) and Sinclair Wyoming Refining Company (**SWRC**), a Wyoming corporation, enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in the Notice of Violation, Docket No. 4713-10, dated August 9, 2010 ("NOV"). The NOV alleges that **SWRC** is in violation of the **Wyoming Environmental Quality Act (Act)**, **specified Solid and Hazardous Waste Rules and Regulations**, and **specified permit conditions**.

W.S. 35-11-901(a)(ii) authorizes the DEQ to negotiate a stipulated settlement, including the payment of a penalty, requirement of compliance schedules, or other settlement conditions, in lieu of litigation. To that end, SWRC and the DEQ/SHWD hereby stipulate and agree as follows.

1. The DEQ/SHWD is responsible for administering and enforcing the Act and the Solid and Hazardous Waste Rules and Regulations under W.S. 35-11-501(b).
2. SWRC operates a refinery in Sinclair, Wyoming, that is the subject of the NOV.
3. By way of background only, this Paragraph 3 contains a recital of facts related to the NOV and SWRC's response to the incident identified in the NOV. This Paragraph 3 does not impose any on-going or additional obligations on SWRC; rather it is meant to provide a factual context for the other sections of this Settlement Agreement. The factual background is, as follows:

Sunday, April 25, 2010: SWRC notified the DEQ of oil carrying through the Aggressive Biological Treatment Unit (ABTU) and engaged their consultant to respond with oil recovery and wildlife impact mitigation.

Monday, April 26, 2010: The SWRC consultant initiated oil recovery and wildlife impact assessment.

Tuesday, April 27, 2010: Sonic cannons were ordered on April 27 to deter waterfowl. An initial shipment of five cannons arrived on-site on April 28th and were set up around the perimeter of the middle and east ponds.

Wednesday, April 28, 2010: The bird rehabilitation team was mobilized to the site with continued patrol and rehabilitation efforts through November 24<sup>th</sup>, when the ponds froze over.

Wednesday, April 28, 2010: A siphon dam was installed in the effluent canal to aid with oil/water separation prior to the water discharging to the middle

evaporation pond. Additional siphon dams were installed on April 29th and May 3rd.

Monday, May 03, 2010: In addition to the free oil recovery, SWRC began pulling vegetation back from the shore to reduce favorable habitat for waterfowl and to mitigate the release of free oil suspended in vegetation surrounding the pond. SWRC also began consolidating stained soils and sediments. This effort began the week of May 3rd and continued through June 8th.

Monday, May 10, 2010: Oil recovery began in the effluent canal and from the surface waters of the middle evaporation pond.

Friday, May 14, 2010: An additional order of sonic cannons arrived on-site. A sonic unit was ordered, delivered to the site and set up on the middle pond on May 18th.

Week of May 17<sup>th</sup>, 2010: A motor was ordered and installed in mid-May on SWRC's flat bottomed boat to aid in avian harassment and recovery.

Tuesday, May 18, 2010: The first shipment of sorbents, previously ordered in response to the release to supplement materials on hand, arrived onsite on May 18<sup>th</sup>, and were deployed where needed for boom replacement and for added recovery locations, as necessary. Also, SWRC began removing free oil from the shoreline the week of May 17<sup>th</sup>, continuing for approximately six weeks ending in late July.

Tuesday, June 08, 2010: SWRC began repairs to the flood irrigation dike system to reduce discharge of flood irrigation water back into the east pond, continuing through June. SWRC also began cutting an irrigation ditch from the far east center pivot to the eastern side of the middle pond to reduce discharge of center pivot water back into the east pond.

Week of July 5th, 2010: SWRC installed transfer pipe from the east pond to the middle pond to facilitate dewatering of the east pond with pumping delayed until mid-September due to air permitting issues.

Week of August 2nd, 2010: SWRC began pumping water from the east pond to the middle pond using a temporary/interim rental pump with pumping delayed until mid-September when the air permit was approved for the large pump purchased by SWRC for this work.

Week of August 2nd, 2010: Two additional sonic units were ordered for the east pond and installed.

Thursday, August 26, 2010: An amphibious vehicle was purchased to maximize the hazing program and to aid in waterfowl recovery and rehabilitation.

September and October, 2010: SWRC continued 7 day per week, daylight to dark patrol of ponds for distressed birds, increasing or decreasing patrol staff depending on bird activity.

Tuesday November 2, 2010: The new pump was started to move more water from the east pond to the west pond, increasing flow to 1000 gpm.

Wednesday, November 24, 2010: The East pond froze over. Continuous pond patrol stopped. SWRC received approval from USFW to reduce patrol to once a day to check for melting and bird activity.

Monday, November 29, 2010: SWRC began daily patrol of ponds to check for melting and bird activity. SWRC removed cannons and winterized sonic units.

Wednesday, December 08, 2010: Daily patrol reported ice on east pond was melting. Placed cannons on the east pond, turned sonic units back on, and increased patrol frequency to three times a day.

Monday, March 7, 2011: The ponds have been patrolled once a day due to being frozen over. Pond patrols and response measures may be re-evaluated due to changes in weather and plant operations. DEQ and USFW have been updated weekly.

4. **Count 1** of the NOV alleges that SWRC failed to meet certain benzene effluent discharge limits. To resolve **Count 1**, SWRC agrees to pay the stipulated penalty identified in Paragraph 10. Also, by way of background, SWRC has taken the actions in Paragraphs 3 and 9 to address issues alleged in the NOV.
5. **Count 2** of the NOV alleges that SWRC failed to remedy certain deteriorations or malfunctions. To resolve **Count 2**, SWRC agrees to pay the stipulated penalty identified in Paragraph 10 and complete the waste minimization, Primary Effluent Settling Tank ("PEST") removal and Dissolved Gas Flotation System ("DGF") or equivalent measures identified in the Compliance Schedule attached as Exhibit 1 and incorporated herein (which requires the installation and operation of certain equipment, and the removal and remediation of certain other equipment, at an estimated cost of more than \$4.5 million). The removal of the PEST, as required by the Compliance Schedule, in addition to the actions already undertaken and described in Paragraph 9, will resolve the F037 issues raised in **Counts 3 through 12**, and PEST-related compliance issues raised in **Count 2**.
6. **Counts 3 through 12** of the NOV contain a variety of allegations related to the PEST and F037. To resolve **Counts 3 through 12** of the NOV, SWRC agrees to pay the stipulated penalty identified in Paragraph 10 and to abide by the Compliance Schedule attached as Exhibit 1. Removal of the PEST, as required by the Compliance Schedule, will resolve the F037

issues raised in **Counts 3 through 12**, and PEST-related compliance issues raised in **Counts 3 through 12**.

7. **Count 13** of the NOV alleges that SWRC's operations caused damage and injury to wildlife. To resolve **Count 13**, SWRC agrees to pay the stipulated penalty identified in Paragraph 10 and to abide by the Compliance Schedule attached as Exhibit 1.
8. **Count 14** of the NOV alleges an imminent and substantial endangerment from violations alleged in Counts 1 through 13. To resolve **Count 14**, SWRC agrees to pay the stipulated penalty identified in Paragraph 10 and to abide by the Compliance Schedule attached as Exhibit 1.
9. Since the incident identified in the NOV occurred, SWRC has taken the corrective actions described in Paragraph 3 and in this Paragraph 9, below. This Paragraph 9 does not impose any on-going or additional obligations on SWRC; Paragraph 9 is only meant to provide context for the other provisions of this Settlement Agreement.

A. Refinery Process Units Operation and Maintenance Actions Undertaken by SWRC:

June 2, 2010: SWRC issued wastewater draining administrative controls; reviewed oil-collection locations & procedures; and revised procedures for discharge of off-spec pH unit wastewater to refinery oil-water system.

August 30, 2010: SWRC implemented utilization of Texas Sampler for alky acid testing and better pH control.

September 1, 2010: SWRC completed reduction in oil carryover to benzene stripper.

September 2, 2010: SWRC completed review for potential reuse of stripped sour water.

September 2, 2010: SWRC implemented direct steam injection to #1 sour water stripper to lower ammonia going to ABTU.

September 30, 2010: SWRC revised desalter operations to lessen oil carryover to refinery oil-water system.

October 27, 2010: SWRC completed additional training of operators in testing, checks and controls.

November 3, 2010: SWRC completed plant-wide water balance review.



November 4, 2010: SWRC completed reduction in blow down from numerous process units implemented to reduce hydraulic loading to oil recovery system.

November 27, 2010: SWRC completed review of total suspended solids, chemical oxygen demand, brine and amine discharge to refinery oil-water system.

#### B. Oil Recovery Systems Actions Undertaken by SWRC

August 13, 2010: SWRC completed review of ammonia discharge effects on oil recovery.

August 25, 2010: SWRC implemented tank 107 equalization of process unit discharge to oil recovery system.

August 30, 2010: SWRC implemented the design process of DGF unit or equivalent.

November 3, 2010: SWRC completed engineering wastewater minimization study.

November 3, 2010: SWRC completed engineering evaluation of oil-recovery upgrade options.

#### C. ABTU Operations-Related Actions Undertaken by SWRC

February 26, 2010: SWRC revised pH monitoring procedure.

June, 2010: SWRC hired experienced wastewater treatment expert to provide expertise and focus on ABTU operations and upstream improvements.

June 30, 2010: SWRC hydrogen peroxide injection implemented.

September 2, 2010: SWRC completed review of ammonia discharge effects on ABTU.

September 8, 2010: SWRC implemented weekly augmentation of bacterial populations.

October 12, 2010: SWRC implemented ABTU phosphorus nutrient enhancement.

October 15, 2010, SWRC completed ABTU supplemental aeration alternatives evaluation.

October 22, 2010: SWRC implemented enhancement to monitoring of biological activity.

October 28, 2010: SWRC completed review and update of training records for ABTU operators.

December 28, 2010: SWRC completed modification of ABTU cell #2 outlet pipe to reduce potential oil overflow and completed maintenance of air distribution headers at ABTU.

10. In accordance with this Settlement Agreement and to resolve all of the allegations of the NOV, SWRC agrees to pay a stipulated monetary penalty of eight hundred fifty thousand dollars and no cents (**\$850,000.00**). The payment of the stipulated monetary penalty shall be made no later than 30 days after the effective date of this Settlement Agreement by check noting DEQ Docket No. 4713-10 and payable to the Wyoming Department of Environmental Quality and addressed to the Wyoming Department of Environmental Quality, Attention: WDEQ/SHWD, Tim Link, Herschler Building, 4<sup>th</sup> Floor West Wing, 122 W. 25<sup>th</sup> Street, Cheyenne, WY 82002.
11. SWRC's full compliance with the terms of this Settlement Agreement, including the Compliance Schedule attached as Exhibit 1, shall constitute satisfaction for all present and future claims by DEQ against SWRC based on the acts or omissions alleged to be violations in the NOV. Contingent on SWRC's full compliance with the terms of this Settlement Agreement, DEQ will not take further enforcement action against SWRC for these specified alleged acts or omissions.
12. SWRC, by entering this Agreement, does not concede or admit to any liability or fault, and this Agreement constitutes no admission of liability or fault.
13. SWRC waives any statute of limitations which may apply to an enforcement action by the DEQ/SWHD involving the specific acts or omissions alleged in Notice of Violation No. 4713-10 in the event the SWRC fails to fulfill its obligations under this Settlement Agreement.
14. Force Majeure. A force majeure is an event arising from causes not foreseeable and beyond the control of SWRC or its contractors which could not be overcome by due diligence and which unavoidably delays or prevents SWRC's timely performance of an obligation or commitment under this Settlement Agreement.

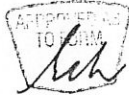
Force majeure events do not include normal weather, other than weather events normal for an area but which prohibit work from proceeding safely,

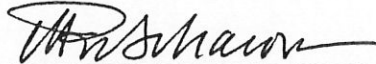
increased costs or expenses of work to be performed, financial difficulty of SWRC to perform, and any other events that were foreseeable and within the control of SWRC or its contractors. The burden of proving a force majeure shall be upon SWRC.

SWRC shall notify a DEQ/SHWD/I&C inspector by telephone or e-mail within three (3) calendar days after SWRC first becomes aware of an event which it believes constitutes a force majeure event. SWRC will confirm in writing its force majeure notice within ten (10) days after the force majeure event, and that written notice shall estimate the anticipated length of delay, identify the force majeure event's causes, measures to be taken to minimize the delay and the timetable for implementing those measures. SWRC's failure to provide such notice and take reasonable and appropriate action(s) to minimize the delay shall constitute a waiver of the force majeure. If the Parties agree about the occurrence of a force majeure event and the resulting need to modify the schedule for SWRC's performance of its obligation(s) or commitment(s) under this Settlement Agreement, the Parties shall amend this Settlement Agreement accordingly.

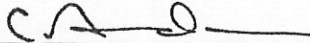
15. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties to enforce the Settlement Agreement.
16. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
17. This Settlement Agreement is binding upon SWRC, its successors and assigns, and upon the DEQ.
18. This Settlement Agreement may only be amended in writing, signed by both parties.
19. The State of Wyoming and the Department of Environmental Quality, Solid and Hazardous Waste Division, do not waive sovereign immunity by entering into this Settlement Agreement, and specifically retain all immunity and all defenses to them as sovereigns pursuant to Wyo. Stat. §1-39-104(a) and all other state law.
20. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.
21. This Settlement Agreement is effective and binding when signed by both parties to this Settlement Agreement.

SINCLAIR WYOMING REFINING COMPANY

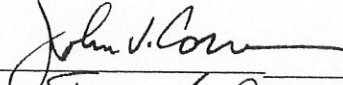


By:   
Name: MIKE ACHACOSO  
Title: VICE PRESIDENT  
Date: 5.23.11

THE WYOMING DEPARTMENT OF  
ENVIRONMENTAL QUALITY

By:   
Name: CARL ANDERSON  
Title: ADMINISTRATOR  
Date: 5/31/11

THE WYOMING DEPARTMENT OF  
ENVIRONMENTAL QUALITY

BY:   
Name: JOHN V. GORE  
Title: Director  
Date: 5/31/11



## **EXHIBIT 1 – COMPLIANCE SCHEDULE**

**1. Waste Minimization and PEST Removal:** SWRC will remove the PEST and remediate the immediate area around it impacted by the observed release. Within thirty (30) days of signing this Settlement Agreement, SWRC will submit a work plan for the PEST removal and related remediation, including completion dates to be mutually agreed upon with DEQ/SHWD. Also, SWRC will complete certain mutually-agreed upon waste minimization projects by June 30, 2012, contingent on SWRC receiving the appropriate permitting (such as an air permit, if necessary) from the State of Wyoming on a timely basis. If permitting is not received for any waste minimization project with enough lead time to allow for completion of the project by the deadline specified herein, SWRC and DEQ/SHWD agree to mutually extend the deadline as necessary. The waste minimization projects will be defined and mutually agreed upon by SWRC and DEQ/SHWD by July 1, 2011 with a simple, written fact sheet briefly defining the project(s) and assigning an estimated cost. SWRC commits to spend at least \$1.5 million total on the combination of the following projects: waste minimization projects (described in this Paragraph 1 and to be mutually agreed upon by July 1, 2011); the removal and remediation of the PEST (described in this Paragraph 1); the oiled wildlife training (described below in Paragraph 3); and the wastewater and salt mass balances (described in Paragraph 4 below).

**2. DGF System or Equivalent System:** SWRC will construct and operate the DGF System or equivalent system by June 30, 2013, contingent on SWRC receiving the appropriate permitting (such as an air permit, if necessary) from the State of Wyoming on a timely basis. If permitting is not received for the DGF System, or equivalent system, with enough lead time to allow for completion of the project by the deadline specified herein, SWRC and DEQ/SHWD agree to mutually extend the deadline as necessary. The DGF System, or equivalent system, will benefit the environment because it reduces oils/solids prior to the ABTU and will be a beneficial addition to the waste water treatment system. SWRC commits to spend at least \$ 3.0 million on the DGF System or equivalent system.

**3. Migratory Bird Training Workshops:** SWRC will fund, up to a limit of \$50,000, two (2) training workshops on oiled wildlife response (presented by certified wildlife rehabilitators agreed upon by DEQ, USFW, and SWRC): one workshop in Rawlins, WY and another workshop in Casper, WY. The workshop may cover topics such as the effects of oil on wildlife, initial intake and exam of oiled wildlife, an introduction to OSHA training, wildlife rehabilitation's role in Incident Command System, and/or actual hands-on cleaning of oiled feathers. The purpose of the workshops is to certify and train personnel that are interested in assisting during a spill. The cost associated with these two (2) workshops (combined up to \$50,000) may be credited towards the \$1.5 million SWRC commits to spend in Paragraph 1 above.

**4. Wastewater and Salt Mass Balances:** SWRC will perform an analysis of the hydrologic/salt balance around its wastewater and pond systems by December 31, 2011. This analysis will include estimates of wastewater and salt mass balances for the initial wastewater discharge along with subsequent water transfers, precipitation, evaporation and transpiration of the refinery wastewater and commingled natural waters in their hydrologic cycle and analysis of the threat or risk of threat posed by the salt mass in the wastewater to human health, wildlife, and the

environment. The cost directly attributable to this wastewater hydrologic/salt balance analysis, up to a limit of \$ 100,000 will be credited towards the \$1.5 million SWRC commits to spend in Paragraph 1 above. After receiving results from the hydrologic/salt balance analysis, SWRC and WDEQ will meet to discuss the results and, if needed, discuss any interim measures and/or as a separate waste minimization effort, contingent on the results of the hydrologic/salt balance investigation.

**5. Capital Commitment:** SWRC commits to spending at least a combined \$ 4.5 million on the DGF, waste minimization projects, oiled wildlife training, wastewater and salt mass balances, and the removal of the PEST. If SWRC spends less than a combined total of \$4.5 million on the DGF, waste minimization projects, wastewater and salt mass balances, and removal of the PEST, then SWRC will pay to the State of Wyoming the difference between the amount actually spent and the \$4.5 million capital commitment in an additional stipulated monetary penalty.

6. This Compliance Schedule does not relieve SWRC of its obligations to comply with all other terms of the applicable authorizations and permits. This Compliance Schedule is a fully integrated part of the Settlement Agreement.

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